

REMARKS

This Supplemental Response is submitted supplementary to a Response filed on February 21, 2003 with regard to the Office Action dated September 13, 2003. Pursuant to 37 C.F.R. §1.111(a)(2), this Response is presumably submitted prior to substantial preparation of a second Office Action and, further, requires no significant additional preparation of such second Office Action. Thus, this Supplemental Response is proper; consideration and entry hereof are respectfully requested.

In the Office Action, the Examiner rejects claims 12-14 and 17-26 under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 4,843,958 to Egosi in view of either U.S. Patent Nos. 6,364,052 or D349,571 to McLean and Merritt, respectively. Further, claims 12-15, 18-20, and 22 are rejected under §103(a) as being obvious over U.S. Patent No. 5,655,453 to Ackley in view of either McLean or Merritt. Finally, claim 16 is rejected under §103(a) as being obvious over the Ackley reference in view of McLean or Merritt and U.S. Patent No. 5,142,976 to Roulleau.

Prima facie obviousness does not exist with respect to the relied upon references as demonstrated in the previously submitted Response. Additionally, the McLean reference is herein traversed as follows.

The McLean patent granted on April 02, 2002 on an application filed March 14, 2000. The present application was filed on May 31, 2001 claiming the benefit, under 35 U.S.C. §120, of U.S. Provisional Patent Application Serial No. 60/208,250 filed on May 31, 2000.

Enclosed in the attached ANNEX, please find a Declaration under 37 C.F.R. §1.131 wherein the inventors, Daniel A. Maude and John Jurney, declare that they

conceived of the invention presently disclosed and claimed prior to March 14, 2000, that is, prior to the filing of the application upon which the McLean patent granted. The inventors further declare that the invention was diligently reduced to practice in the United States by filing an application for patent in the Patent Office. Documentary evidence of such conception and diligence is enclosed in the Declaration as Exhibits A, B, C, and D.

Accordingly, the McLean reference is now properly antedated by the enclosed Declaration. Thus, McLean is not prior art as defined by 35 U.S.C. §102 and may not be asserted in the outstanding obviousness rejections.

Thus, with respect to the obviousness rejections of claims 12-15 and 17-26, the only remaining secondary references is Merritt.

As discussed in the previous Response, Merritt is merely a design patent which discloses an ornamental design of a ear protector and cheering aid. Provided in the reference is one figure showing an elongated object having a numeral "4" at one end thereof. There is absolutely no disclosure in Merritt regarding the nature of the numeral "4" or how the numeral is applied to the elongated object. That is, it is not taught whether the numeral is raised on the surface of the elongated object, or recessed, stamped, dyed, etc. nor is it taught how the numeral is applied.

As it is known, a drawing alone may be used to anticipate or render obvious a claimed invention only if the drawing shows all of the claimed structural features and how they are put together. *In re Cruz*, 455 F.2d 1069, 173 USPQ 25 (CCPA 1972); *Jockmus v. Leviton* 28 F.2d 912 (2d Cir. 1928). Clearly, Merritt, in this respect, *lacks merit*, and fails to satisfy the established criteria. Thus, combining Egosi and Merritt or

Ackley and Merritt, as suggested by the Examiner, fails to teach or suggest the invention as recited in claims 12-15 and 17-26. Accordingly, the outstanding obviousness rejections are improper and must be withdrawn; reconsideration thereof is respectfully requested.

Concerning the obviousness rejection of claim 16, it is first noted that the claim depends from allowable claim 12 and, thus, claim 16 is correspondingly allowable. Further, in the outstanding rejection of claim 16, the Examiner relies upon McLean or Merritt as applied against claims 13-15, 18-20, and 22. The McLean reference is herein antedated and thus may not be applied against claim 16. Thus, the Examiner now relies solely upon Merritt for teaching the recited process including, "...providing an earplug; orienting the earplug relative to a printing device; and printing the pattern on the earplug using the printing device..." As demonstrated above, Merritt fails to teach or suggest all of the recited limitations. Thus, the outstanding obviousness rejection of claim 16 is improper and must be withdrawn.

In sum, the McLean reference is herein antedated and thus removed as a prior art reference against Applicant's disclosed and claimed invention. Merritt, as discussed herein and as demonstrated in the previous Response, fails to teach or suggest the claimed invention when taken singularly or in combination with the Egosi, Ackley, and/or Roulleau references. Thus, *prima facie* obviousness does not exist with respect to the relied upon references; reconsideration and withdrawal of all outstanding rejections and allowance of the application are respectfully requested.

The Examiner is invited to contact Applicants' attorneys at the bel w-listed telephone number regarding this Supplemental Response or otherwise concerning the present application.

Applicants herein petition for any necessary extension of time required for entry and consideration of the present Supplemental Response.

The Commissioner is herein authorized to charge any required or outstanding fees regarding this Supplemental Response or otherwise concerning the present application to Deposit Account No. 06-1130 maintained by Applicants' attorneys.

Respectfully submitted,

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